

CHAPTER 85B. ABATEMENT OF GRAFFITI

85B.01. Purpose.

Subd. 1. The Council finds that there are gangs operating within the City and that these gangs are undesirable for the City of Rochester and are detrimental to its youth. In conjunction with the proliferation of these gangs, the Council finds that graffiti is appearing throughout the City of Rochester. Graffiti is used to identify claimed areas of gang control or mark gang territory. The Council finds that quick removal of the graffiti may assist in preventing the entrenchment of the gangs.

Subd. 2. The Council finds that exposure to the graffiti of these gangs adversely affects the emotional well being of city youth and creates peer pressure on city youth to join these undesirable and detrimental organizations.

Subd. 3. The Council further finds that graffiti creates a condition of blight which can result in the deterioration of property values and is inconsistent with the City's property maintenance goals and aesthetic standards. In addition, unless graffiti is quickly removed, other properties soon become the targets of graffiti.

Subd. 4. The Council hereby declares its intention to minimize and to quickly remove graffiti to limit its adverse impact on city youth and neighborhoods. Graffiti is hereby declared to be a public nuisance and a public health and safety hazard for purposes of Minnesota Statutes Section 429.101, Subd. 1(c).

85B.02. Definitions. For purposes of this chapter, the terms defined in this section shall have the following meanings ascribed to them.

Gang shall mean any organization comprised of minors and/or adults who band together and claim territory within the city for themselves by the inscription of symbols on structures within the city and which has been identified by local law enforcement officials as such an organization.

Graffiti shall mean any writing, printing, marks, signs, symbols, figures, designs, inscriptions or other drawings which are scratched, scrawled, painted, drawn or otherwise placed on any exterior surface of a building, wall, fence, sidewalk, curb or other permanent structure on public or private property and which have the effect of defacing the property.

Graffiti materials include paint, aerosol or pressurized containers of paint, indelible markers, ink, dye or any other substance capable of defacing property.

85B.03. Unlawful Conduct Regarding Creation of Graffiti and Possession of Graffiti Materials.

Subd. 1. It shall be unlawful for any person to intentionally place graffiti on any exterior surface located on public or private property.

Subd. 2. It shall be unlawful for any person to possess graffiti materials for the purpose of placing graffiti on any exterior surface located on public or private property.

85B.04. Limited Entry Upon Land; Interference with Official Duties.

Subd. 1. Police department personnel that have probable cause to believe a violation of this chapter exists may enter upon private property at any reasonable time for the purpose of carrying out any of the duties assigned to them under this chapter. However, prior to entry upon private property to verify the existence of a violation of this chapter, an appropriate warrant authorizing the contemplated search or

other necessary actions shall be first obtained from a court of competent jurisdiction. If a property owner or person in possession of private property consents to entry by police onto the property, no warrant shall be required.

Subd. 2. Upon a finding by the Council that graffiti exists or with the consent of the property owner, members of other city departments authorized by the Council may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned to them under this chapter.

Subd. 3. It shall be unlawful for any person to prevent, delay or interfere with representatives of the city police department or other city departments while they are engaged in the performance of duties imposed by this chapter.

Subd. 4. A property owner may ask the City to remove graffiti from the owner's property before being ordered to do so following the abatement procedure set forth in 85B.05 through 85B.09. If the City agrees to remove the graffiti, the City shall have the property owner or its designated agent sign a consent form authorizing the City or its agents to enter onto the property and a release of liability form. The property owner shall be liable for any costs which the City incurs in removing the graffiti. The City may collect the costs as a special assessment pursuant to Minnesota Statutes 429.101, Subd. 1(c) if the property owner fails to reimburse the City upon request.

85B.05. Unlawful Conduct; Owner's Responsibility. It shall be unlawful for the owner of any property to allow graffiti to be placed on any external surface on the owner's property. The owner of any such property shall remove therefrom graffiti which has been placed there.

85B.06. City Police to Identify.

Subd. 1. Based upon information received from the public or upon police observation, the city police shall investigate and identify graffiti. After the police department has verified the existence of graffiti, the city administrator shall send a letter to the property owner by certified mail informing the property owner about the graffiti and requesting the property owner to remove the graffiti within a reasonable period of time, based upon consideration of weather conditions and other relevant factors. A copy of the city administrator's letter shall be sent to the council member for the ward in which the graffiti is located. The police department shall verify whether the graffiti has in fact been removed.

Subd. 2. If the police department finds that the graffiti has not been removed within the time allotted, the department shall contact the city clerk, who shall schedule a public hearing. The city clerk shall notify the affected property owner of the hearing date, the preliminary findings that graffiti exists on the owner's property and that the Council may after the hearing order the removal of the graffiti by either the property owner or the city's department of public works, and if said department has to remove the graffiti, the costs will be assessed against the owner's property.

85B.07. Hearing.

Subd. 1. At a hearing before the Council, the Council shall receive evidence from the police department and from any other persons with knowledge as to the existence of graffiti. The property owner shall be entitled to be heard on all matters relating to graffiti and the process of removal. The existence of graffiti must be proven by a preponderance of the evidence.

Subd. 2. If the Council finds that graffiti exists, the Council shall notify the department of public works and direct its removal in accordance with Section 85B.08. The department of public works may authorize private contractors to handle graffiti removal.

85B.08. Notice to Owner. In the event the Council finds that graffiti exists, the police department shall mail a written order to the

owner of the subject real property, addressed to the owner's last known address. The written order shall contain the following:

- (1) A description of the real estate sufficient for identification.
- (2) Inform the owner that the Council has found graffiti exists on the owner's property.
- (3) A request that the owner remove or obliterate the graffiti within a reasonable time as determined by the Council.
- (4) Inform the owner that unless corrective action is taken within the time allotted, the department of public works may remove the graffiti and charge all costs incurred therein against the real estate as a special assessment to be collected in the same manner as taxes against real estate.

85B.09. Costs to be Assessed.

Subd. 1. In the event the City removes and/or abates the graffiti, an accurate record of the costs incurred therein shall be kept by the department of public works and reported to the department of finance. The total costs of this abatement, including the administrative costs incurred by the department of finance in processing the abatement and costs incurred by the police department in investigating the graffiti, shall be considered a tax on real property. This may be assessed against the affected property and collected as provided in Chapter 10 of the City Charter and Minnesota Statutes 429.101.

Subd. 2. In the event the person or persons responsible for the graffiti are convicted and the court orders the offender(s) to pay restitution for the cost of the clean up, and either the City or a private property owner have expended funds to clean up the graffiti, the restitution shall be directed to either the City or the private property owner as reimbursement for the cost of the clean up.

85B.10. Graffiti Abatement Civil in Nature. A violation of Sections 85B.05 through 85B.09 of the Rochester Code of Ordinances, relating to the abatement of graffiti, shall not be treated as misdemeanors nor shall they be criminal in nature.

85B.11. Severability. If any provision of this ordinance is declared by any court of competent jurisdiction to be illegal and in conflict with any law, the validity of the remaining provisions and their application to other persons and circumstances shall not be affected.

(2932, 4/5/94)